HONOURABLE SRI JUSTICE J.CHELAMESWAR
AND
HONOURABLE SRI JUSTICE D.APPARAO

30-08-2006

WRIT PETITION No.11247 of 2006

Between:

Satpal Singh .. Petitioner.

and

1. Principal Secretary to Government,
   General Administration Department,
   Government of A.P., Secretariat,
   Hyderabad and another.

   ..
   Respondents.

ORDER (Per Hon'ble Sri Justice D.Apparao):

Rajpal Singh was ordered to be detained by the 2nd respondent-District Collector and District Magistrate, Hyderabad District, in CR.No.B1/396/2006/ESH, dated 03-04-2006 under Section 3 (2) read with Section 3(1) of the A.P.Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffaic Offenders and Land Grabbers Act, 1986 (for short 'the Act').

2. The petitioner, the brother of Rajpal Singh, challenges the validity of the order of the 1st respondent, as illegal, arbitrary, unconstitutional and violative of Article 22 of the Constitution of India and seeks a declaration that the order is bad in law and prays that the detenu to be released forthwith by granting a writ of habeas corpus.

3. The order of detention was based on the following grounds:-

(1) That the detenu was found possession of a plastic bag on 24.8.2005 containing 50 illicitly distilled Liquor sachets each containing about 100 ml. The detenu was arrested and the contraband was seized. A case in COR No. 69/2005-06, dated 24.08.2005 was registered. The said ID liquor on chemical analysis was found to be illicitly distilled liquor unfit for potable purpose. A criminal case C.C. No. 261/2006 is pending for trial.

(2) That the detenu was involved in another case in COR No. 93 of 2005-06, dated 18.10.2005. On the said date he

was found possession of plastic bag containing 56 ID liquor sachets each containing about 100 ml. He was arrested and contraband was seized. The said I.D. liquor was sent to Chemical Examiner who found it was illicitly distilled liquor unfit for potable purpose. A case in C.C. No.262/2006 is pending trial.

(3) The detenu was involved in another case registered as COR No. 143 of 2005/06, dated 13.03.2006. On that day he was found in possession of black rubber tubes each containing 20 litrs of I.D. liquor totaling 40 litrs of I.D. liquor and one gunny bag containing 5000 I.D. liquor sachets each containing about 100 ml. He was arrested and contraband was seized. When a sample was sent to Chemical Examiner, he found that they are illicitly distilled liquor unfit for potable purpose. They are injurious to health.

4. The detaining authority considering the material placed before him, opined that the detenu was involved in the dangerous activities connected with possession and sale of illicitly distilled liquor in contravention of A.P. Prohibition Act, 1995 and A.P. Excise Act, 1968. By committing the above illegal activities, he is a boot-legger as defined under Section 2(b) of the A.P.Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act 1/86). He has been indulging in lawless activities prejudicial to the Maintenance of the Public Order in this area.

5. Through G.O. Rt. No. 1935 G.A. (L & O II) Department, dated 13.4.2006 the Government accorded its approval of the detention order. The Advisory Board confirmed the order of detention in its meeting held on 22-05-2006. Based on the said recommendation of the Advisory Board, the Government confirmed the orders of detention in G.O.Rt.No.2762, General

Administration (Law & Order.II) Department, dated 30-05-2006 for a period of 12 months from the date of detention i.e., 04-04-2006.

6. The brother of the detenu challenged the detention on the grounds that the detention order cannot be passed where small quantities are involved. He also contended that the matter was not placed before advisory board within 3 weeks. The order of detention cannot exceed three months at any one time. However, the order of detention is made for twelve months contrary to Section 3 (2) of the Act and Articles 14, 21 and 22 of the Constitution of India. Later he filed W.P.M.P.No.21070 of 2006 and sought two more additional grounds to be taken for consideration, firstly that the sponsoring authority did not place the material relating to the remand of the detenu and subsequent order of bail by the learned Magistrate. Secondly, that the detaining authority was under mistaken impression that the detenu was in the judicial custody at the time of passing of the order. This material is vital. Had the bail order been placed, the detaining authority would have taken a different stand. Non consideration of this aspect would vitiate the order of detention as being violative of Article 22 (5) of the Constitution of India.

7. The thrust of the first argument is that the order of detention was not placed before the Advisory Board within three weeks as contemplated under Section 10 of the Act. A perusal of the record shows that the District Collector and Magistrate passed the order of detention on 03-04-2006. It was approved on 13-04-2006. It was placed before the Advisory Board on 20.04.2006 within three weeks. The Advisory Board in its meeting dated 22.5.2006 approved the order of detention. The Government has confirmed the same by G.O. dated 30.05.2006. Therefore, the contention that it was not placed within three weeks before the Advisory Board cannot stand.

8. He did not question that he could not effectively represent before the authorities. In fact, earlier he filed W.P.No.9409 of 2006 even before the matter is placed before the Advisory Board. It was disposed of on 13-05-2006. The Advisory Board passed orders even before disposal of the writ petition. The said fact was not brought to the notice of the Court while disposing of the writ.

9. The learned counsel for the writ petitioner contended that the order of detention should be limited for a period of three months as contemplated under Sec. 3 (2) of the Act. The impugned order of detaining for a period of 12 months is not valid. Therefore, the detention is invalid. In fact, we do not see how this contention could be taken in the light of the decision of the Supreme Court in **HARPREET KAUR v. STATE OF MAHARASHTRA**[1]**.** A similar provision under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers land Drug Offenders Act, 1981 finds a place, which is similar to Section (3) of the A.P. Act 1 of 1986.

> "Section 3 reads as follows:
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> "3. Power to make orders detaining certain persons:- (1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order; it is necessary so to do, make an order directing that such person is detained.
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> (2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:
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> Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government ;may, if satisfied as aforesaid that it is

necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government."

10. The learned Judges in the above decision considered the said question. It was held:

"A plain reading of the section shows that the State Government under Section 3 (1), if satisfied, with respect to any person that with a view to preventing him from acting in a manner prejudicial to the maintenance of "public order", it is necessary so to do, make an order of detention against the person concerned. Sub-section (2) of Section 3 deals with the delegation of powers by the State Government and provides that if the State Government is satisfied, having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower District Magistrate or the Commissioner of Police, as the case may be to exercise the powers of the State Government to order detention of a person as provided by sub-section (1), then the State Government may, by an order in writing direct that during *such period as may be specified in the order, the District Magistrate or the Commissioner of Police may also if satisfied as provided in sub-section (1), exercise the powers of the State Government as conferred by sub-section* (1). The proviso to sub-section (2), only lays down that *the period of delegation of powers, specified in the order to be made by the State Government under sub-section* (2), delegating to the District Magistrate or the Commissioner of Police the powers under sub-section (1) *shall not in the first instance exceed three months.* The proviso, therefore, has nothing to do with the period of detention of a detenu. The maximum period of detention is prescribed under Section 13 of the Act which lays down that a person may be detained in pursuance of any detention order made under the Act, which has been confirmed under Section 12 of the

> Act. It is, therefore, futile to contend that the order of detention in the instant case was vitiated because it was for a period of more than three months. The second argument, therefore, also fails."

11. The learned counsel for the petitioner contended that the District Collector & Magistrate did not mention the period of detention and, therefore, the order is bad under law.

12. It is true that in the order of detention, the 1st respondent did not specify the period of detention and G.O. Rt. No. 1935, dated 13.4.2006, is equally silent. Viewed in isolation, the order may appear to be defective and be liable to be set aside, on the ground that it does not specify the period of detention. It would have been particularly so, had it been an order of a Criminal Court, imposing punishment. The reason is that stipulation of period of imprisonment is one of the important facets in the matter of imposition of punishment. However, orders directing prevention detention stand on slightly different footing. Under the Act, an order of detention once passed, would be in force, initially for a period of three months. It can be extended by the State Government, in exercise of powers under proviso to sub-section (2) of Section 3 of the Act, for a term not exceeding three months, at a time, up to 12 months. I*n AIR 1952 SC 350,* the Supreme Court held that omission to specify the period of detention is not fatal. Therefore, the order of detention cannot be set aside, on the sole ground that it does not specify the period.

13. Evidently, in the order of detention, the fact that the detenu was on bail for the cases mentioned in the grounds 1 and 2 were not noted. However, the third ground of detention pertaining to a case registered under C.O.R.No.143/2005-06, the fact of granting of bail was not brought to his notice nor the said aspect was gone into by the detaining authority.

14. As early as in **M.AHAMEDKUTTY v. UNION OF INDIA AND ANOTHER**[2], the Supreme Court, in this regard, observed:

> "It is also imperative that if the detenu was already in jail the grounds of detention are to show that awareness of that fact on the part of the detaining authority, otherwise there would be non-application of mind and detention order vitiated thereby. In the present case it appears from the records that the bail application and the bail order were furnished to the detaining authority on his enquiry and it was stated in the grounds of detention that the detenu was remanded to judicial custody and he was subsequently released on bail. The bail application contained the grounds for bail including that he had been falsely implicated as an accused in the case at the instance of persons who were inimically disposed towards his, and the bail order contained the conditions subject to which the bail was granted. Considering the facts the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired, and if those had been considered, they would be documents relied o by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. It must therefore, beheld that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article
> 22 (5) rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case."

15. Following the above decision, in **ABDUL SATHAR IBRAHIM MANIK v. UNION OF INDIA**[3], the Supreme Court reiterated:

> "In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu."

16. In the subsequent decision reported in **AHAMED**

NASSAR v. STATE OF TAMILNADU AND OTHERS[4]**,** the very same contention was considered and the Supreme Court opined that failure to place all relevant material and non-consideration thereof by detaining authority vitiates the order of detention.

17. Recently, the Supreme Court in **T.V.SRAVANAN v. STATE**[5], opined:

> "The bail applications moved by the appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail was merely the *ipse dixit* of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere *ipse dixit* of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, no sufficient compliance with the requirement as laid down by the Supreme Court."

18. In view of the above decisions, we must hold that non-placing of the relevant material before the detaining authority vitiates the order of detention. Importantly, the failure in recording the enlargement of the detenu on bail is undoudbtedly a ground to quash the order of detention. The decisions relied above apply in all fours to the facts of the present case. Therefore, the order of detention is liable to be quashed.

19. In the result, the writ petition is allowed. The order of detention is set aside. The detenu shall be released forthwith. No costs.

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(J.CHEMALESWAR, J)

August 30, 2006 **(D.APPARAO, J)**

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[1] (1992) 2 Supreme Court Cases 177

[2] (1990) 2 Supreme Court Cases 1

[3] AIR 1991 S.C. 2261

[4] 1999 Supreme Court Cases (Cri) 1469

[5] (2006) 1 Supreme Court Cases (Cri) 593